

1999 Assembly Bill 495

Date of enactment: **December 16, 1999**
Date of publication*: **December 29, 1999**

1999 WISCONSIN ACT 11

AN ACT *to repeal* 25.17 (14) (f); *to amend* 25.18 (1) (a), 25.18 (1) (m), 40.02 (6), 40.02 (7), 40.04 (3) (intro.), 40.04 (3) (a), 40.04 (3) (d), 40.04 (4) (a) 2., 40.04 (4) (a) 2m., 40.04 (7) (a) (intro.), 40.23 (2m) (b), 40.23 (2m) (e) 1., 40.23 (2m) (e) 2., 40.23 (2m) (e) 3., 40.23 (2m) (e) 4., 40.26 (2) (b), 40.26 (5) (c), 40.73 (1) (a) (intro.) and 40.73 (1) (c); and *to create* 40.04 (3) (ab), 40.04 (3) (am), 40.04 (4) (a) 2g., 40.05 (2) (cm), 40.23 (2m) (em) and 40.73 (1) (am) of the statutes; **relating to:** benefit improvements, interest crediting, variable annuity option, contribution credits for employers, death benefits, credit for legislative service, recognition of income and capital gains and losses in the fixed retirement investment trust and affecting certain actuarial assumptions and liabilities under the Wisconsin retirement system.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 25.17 (14) (f) of the statutes is repealed.

SECTION 2. 25.18 (1) (a) of the statutes is amended to read:

25.18 (1) (a) Notwithstanding subch. IV of ch. 16 and s. 20.930, employ special legal or investment counsel in any matters arising out of the scope of its investment authority. The employment of special legal counsel shall be with the advice and consent of the attorney general whenever such special counsel is to be compensated by the board. Any expense of counsel so employed shall be borne by ~~the current income account of the fund for which the services shall be furnished, except that the fixed retirement investment fund may bear this expense from its transaction amortization account.~~

SECTION 3. 25.18 (1) (m) of the statutes is amended to read:

25.18 (1) (m) Notwithstanding subchs. IV and V of ch. 16, employ professionals, contractors or other agents necessary to evaluate or operate any property if a fund

managed by the board has an interest in, or is considering purchasing or lending money based upon the value of, that property. Costs under this paragraph shall be paid by the fund and charged to the appropriate ~~current income~~ account under s. 40.04 (3).

SECTION 4. 40.02 (6) of the statutes is amended to read:

40.02 (6) “Assumed benefit rate” means a rate of 5%. The assumed benefit rate shall be used for calculating reserve transfers at the time of retirement, making actuarial valuations of annuities in force, determining the amount of lump-sum death benefits payable from the portion of an annuity based on additional deposits and crediting interest to employee required contribution accumulations under s. 40.04 (4) (a) 2.

SECTION 5. 40.02 (7) of the statutes is amended to read:

40.02 (7) “Assumed rate” means the probable average effective rate expected to be earned for the fixed annuity division on a long-term basis. The assumed rate shall be a rate of ~~7.5%~~ 8% and the actuarial assumption for across-the-board salary increases for the purpose of

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

valuing the liabilities of the Wisconsin retirement system shall be ~~4.9%~~ 3.4% less than the assumed rate unless due to changed economic circumstances the actuary recommends and the board approves a different rate. The assumed rate for a calendar year shall be used for all calculations of required contributions and reserves for participants, except as provided in s. 40.04 (4) (a) ~~2., 2g.~~ and 2m., and the amount of any lump sum benefit paid instead of an annuity, except it shall not be used for any purpose for which the assumed benefit rate is to be used under sub. (6).

SECTION 6. 40.04 (3) (intro.) of the statutes is amended to read:

40.04 (3) (intro.) A fixed retirement investment trust and a variable retirement investment trust shall be maintained within the fund under the jurisdiction and management of the investment board for the purpose of managing the investments of the retirement reserve accounts and of any other accounts of the fund as determined by the board, including the accounts of separate retirement systems. Within the fixed retirement investment trust there shall be maintained a transaction amortization account and a ~~current income~~ market recognition account, and any other accounts as are established by the board or the investment board. A current income account shall be maintained in the variable retirement investment trust. All costs of owning, operating, protecting and acquiring property in which either trust has an interest shall be charged to the current income or ~~transaction amortization~~ market recognition account of the trust having the interest in the property.

SECTION 7. 40.04 (3) (a) of the statutes is amended to read:

40.04 (3) (a) ~~All earnings, profits or losses of the fixed retirement investment trust and the~~ The net gain or loss of the variable retirement investment trust shall be distributed annually on December 31 to each participating account in the same ratio as each account's average daily balance within the respective trust bears to the total average daily balance of all participating accounts in ~~that~~ the trust. ~~For the fixed retirement investment trust the amount to be distributed shall be the then balance of the current income account plus 20% of the then balance of the transaction amortization account. For the variable retirement investment trust the~~ The amount to be distributed shall be the excess of the increase within the period in the value of the assets of the trust resulting from income from the investments of the trust and from the sale or appreciation in value of any investment of the trust, over the decrease within the period in the value of the assets resulting from the sale or the depreciation in value of any investments of the trust.

SECTION 8. 40.04 (3) (ab) of the statutes is created to read:

40.04 (3) (ab) Beginning on December 31, 2000, the balance of the transaction amortization account shall be

determined and 20% of the balance established on December 31, 2000, shall be distributed annually on December 31 to each participating account in the same ratio as each account's average daily balance within the fixed retirement investment trust bears to the total average daily balance of all participating accounts in the trust until the balance of the transaction amortization account is entirely distributed. Notwithstanding sub. (3) (intro.), after the entire balance of the transaction amortization account has been distributed, the department shall close the account.

SECTION 9. 40.04 (3) (am) of the statutes is created to read:

40.04 (3) (am) 1. Beginning on January 1, 2000, there shall be maintained within the fixed retirement investment trust a market recognition account. The department shall establish and administer the market recognition account as recommended by the actuary or actuarial firm retained under s. 40.03 (1) (d) and as approved by the board.

2. Annually, the total market value investment return earned by the fixed retirement investment trust during the year shall be credited to the market recognition account.

3. Annually, on December 31, the sum of all of the following shall be distributed from the market recognition account to each participating account in the fixed retirement investment trust in the same ratio as each account's average daily balance bears to the total average daily balance of all participating accounts in the trust:

a. The expected amount of investment return in the fixed retirement investment trust during the year based on the assumed rate.

b. An amount equal to 20% of the difference between the total market value investment return earned by the fixed retirement investment trust and the expected amount of investment return of the fixed retirement investment trust during the year ending on December 31 based on the assumed rate.

c. An amount equal to 20% of the sum of the differences between the total market value investment return earned by the fixed retirement investment trust and the expected amount of investment return of the fixed retirement investment trust at the end of the 4 preceding years. For the purpose of making this calculation, the amount in the market recognition account at the end of each year that occurs before the year 2000 shall be assumed to be zero.

SECTION 10. 40.04 (3) (d) of the statutes is amended to read:

40.04 (3) (d) Notwithstanding par. (a), assets of the fixed retirement investment trust which are authorized to be invested in common or preferred stock may, if authorized by rule, be invested as a part of the variable retirement investment trust with that portion of the annual distributions of net gains or losses to the fixed retirement investment trust from the variable retirement investment

trust as provided in par. (a) which results from transactions or events described in s. 25.17 (14) (f) being credited to the transaction amortization market recognition account and the balance of the distributions being credited to the current income account.

SECTION 11. 40.04 (4) (a) 2. of the statutes is amended to read:

40.04 (4) (a) 2. Credited as of each December 31 with interest on the prior year's closing balance at the effective rate on all employee required contribution accumulations in the variable annuity division, on all employee required contributions in the fixed annuity division on December 31, 1984, on all employee required contributions in the fixed annuity division of participants who are not participating employees after December 31, 1984, and on all employee and employer additional contribution accumulations and with interest on the prior year's closing balance at the assumed benefit rate on all employee required contribution accumulations in the fixed annuity division for participants who are participating employees after December 31, 1984, but who terminated covered employment before the effective date of this subdivision [revisor inserts date].

SECTION 12. 40.04 (4) (a) 2g. of the statutes is created to read:

40.04 (4) (a) 2g. Credited as of each December 31, with interest on the prior year's closing balance at the effective rate on all employee required contribution accumulations in the fixed annuity division for participants who are participating employees on or after the effective date of this subdivision [revisor inserts date].

SECTION 13. 40.04 (4) (a) 2m. of the statutes is amended to read:

40.04 (4) (a) 2m. Debited, if a participant terminates covered employment on or after January 1, 1990, but before the effective date of this subdivision [revisor inserts date], and applies for a benefit under s. 40.25 (2), with an amount equal to the amount by which the fixed annuity division interest credited on or after January 1, 1990, but before the effective date of this subdivision [revisor inserts date], to employee required contributions, exceeds the interest crediting at an annual rate of 3% on each prior year's closing balance.

SECTION 14. 40.04 (7) (a) (intro.) of the statutes is amended to read:

40.04 (7) (a) (intro.) As otherwise elected by a participant prior to April 30, 1980, or on or after January 1, 2001. Any participant who was a participant prior to April 30, 1980, and whose accounts on January 1, 1982, include credits segregated for a variable annuity shall have his or her required and additional contributions made on or after January 1, 1982, credited to the variable annuity division in a manner consistent with the participant's election prior to April 30, 1980, unless prior to January 1, 1982, the participant terminated such election under s. 40.85, 1979 stats. Any participant who

elects or has elected to have any of his or her credits segregated for a variable annuity on or after January 1, 2001, shall have 50% of his or her required and additional contributions made on or after the date of election credited to the variable annuity division. The department shall by rule provide that any participant who elects or has elected variable participation prior to April 30, 1980, or on or after January 1, 2001, may elect to cancel that variable participation as to future contributions. The department's rules shall permit a participant who elects or has elected to cancel variable participation as to future contributions, or an annuitant, to elect to transfer previous variable contribution accumulations to the fixed annuity division. A transfer of variable contribution accumulations under this paragraph shall result in the participant receiving the accrued gain or loss from the participant's variable participation. A participant may specify that election to cancel participation in the variable annuity division is conditional. If the participant so specifies the election is effective on the first date on which it may take effect on which the participant:

SECTION 15. 40.05 (2) (cm) of the statutes is created to read:

40.05 (2) (cm) The department may adjust the unfunded prior service liability balance of the Wisconsin retirement system under par. (b) and of each employer that makes contributions under par. (b) to reflect any changes in the assumed rate and the assumption for across-the-board salary increases specified in s. 40.02 (7) and any other factor specified by the actuary if the actuary recommends and the board approves the changes or if otherwise provided by law.

SECTION 16. 40.23 (2m) (b) of the statutes is amended to read:

40.23 (2m) (b) Except as provided in s. 40.26, subject to the limitations under section 415 of the ~~internal revenue code~~ Internal Revenue Code, the initial amount of the normal form annuity shall be an amount equal to 65% 70%, or 65% for participants whose formula rate is determined under par. (e) 3. or 85% for participants whose formula rate is determined under par. (e) 4., of the participant's final average earnings plus the amount which can be provided under pars. (c) and (d) or, if less, shall be in the monthly amount equal to the sum of the amounts determined under pars. (c), (d) and (e) as modified by par. (f) and in accordance with the actuarial tables in effect on the annuity effective date. If the participant has creditable service under both par. (e) 4. and another category under par. (e), the percent applied under this paragraph shall be determined by multiplying the percent that each type of creditable service is of the participant's total creditable service by 85% and 65% or 70%, respectively, and adding the results, except that the resulting benefit may not be less than the amount of the normal form annuity that could be paid based solely on the creditable service under par. (e) 4.

SECTION 17. 40.23 (2m) (e) 1. of the statutes is amended to read:

40.23 (2m) (e) 1. For each participant for creditable service of a type not otherwise specified in this paragraph that is performed before January 1, 2000, 1.765%; for such creditable service that is performed on or after January 1, 2000, 1.6%.

SECTION 18. 40.23 (2m) (e) 2. of the statutes is amended to read:

40.23 (2m) (e) 2. For each participant for creditable service as an elected official or as an executive participating employe that is performed before January 1, 2000, 2.165%; for such creditable service that is performed on or after January 1, 2000, 2%.

SECTION 19. 40.23 (2m) (e) 3. of the statutes is amended to read:

40.23 (2m) (e) 3. For each participant subject to titles II and XVIII of the federal social security act Social Security Act, for service as a protective occupation participant that is performed before January 1, 2000, 2.165%; for such creditable service that is performed on or after January 1, 2000, 2%.

SECTION 20. 40.23 (2m) (e) 4. of the statutes is amended to read:

40.23 (2m) (e) 4. For each participant not subject to titles II and XVIII of the federal social security act Social Security Act, for service as a protective occupation participant that is performed before January 1, 2000, 2.665%; for such creditable service that is performed on or after January 1, 2000, 2.5%.

SECTION 21. 40.23 (2m) (em) of the statutes is created to read:

40.23 (2m) (em) 1. For the purpose of determining the applicable percentage rate under par. (e), all of the following shall apply:

a. Any creditable service forfeited by a participating employe before January 1, 2000, and which is subsequently reestablished by the participating employe under s. 40.25 (6), shall be considered to have been performed before January 1, 2000.

b. Any creditable service received under s. 40.25 (7), which is based on service performed before January 1, 2000, shall be considered to have been performed before January 1, 2000.

c. Any creditable military service received under s. 40.02 (15) (c), which is based on creditable service performed before January 1, 2000, shall be considered to have been performed before January 1, 2000.

2. This paragraph shall only apply to participants who are participating employes on or after January 1, 2000.

SECTION 22. 40.26 (2) (b) of the statutes is amended to read:

40.26 (2) (b) The amount of the annuity payments, excluding any portion originally provided by additional contributions, which would have been paid under the ter-

minated annuity, if the annuity had been a straight life annuity, prior to the participant's normal retirement date or prior to the annuity termination date, whichever would first occur, shall be credited to a memorandum account which is subject to s. 40.04 (4) (a) 2., 2g. and 2m. and (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified domestic relations order, the memorandum account established under this paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

SECTION 23. 40.26 (5) (c) of the statutes is amended to read:

40.26 (5) (c) Any annuity or lump sum payment made to the participant shall be considered to have been made in error and is subject to s. 40.08 (4). The sum of the payments made in error shall be credited to a memorandum account. The memorandum account is subject to s. 40.04 (4) (a) 2., 2g. and 2m. and (c). If the annuity was recomputed under s. 40.08 (1m), the memorandum account established under this paragraph shall be adjusted pursuant to s. 40.08 (1m) (f) 2. The retirement account of a participant paid in error, and whose annuity was terminated, shall be reestablished as if the terminated annuity had never been effective, including the crediting of interest.

SECTION 24. 40.73 (1) (a) (intro.) of the statutes is amended to read:

40.73 (1) (a) (intro.) Upon the death of a participant, other than an annuitant or a participating employe, the sum of the additional and employe required contribution accumulations credited to the participant's account on the beneficiary annuity effective date or, in the case of a lump sum payment, the first day of the month in which the death benefit is approved. In addition:

SECTION 25. 40.73 (1) (am) of the statutes is created to read:

40.73 (1) (am) Upon the death of a participating employe who has not attained age 55, and any protective occupation participant who has not attained age 50, the sum of the additional contribution and twice the employe required contribution accumulations credited, including any interest credited to the accumulations, to the participant's account on the beneficiary annuity effective date or, in the case of a lump sum payment, the first day of the month in which the death benefit is approved.

SECTION 26. 40.73 (1) (c) of the statutes is amended to read:

40.73 (1) (c) ~~In lieu of the benefit payable under par. (a) or (b), upon~~ Upon the death of a participating employe who, prior to death, met all of the requirements under s. 40.23 (1) except termination of employment and the filing of an application, if the beneficiary to whom a death benefit is payable is a ~~dependent of the participating employe~~ natural person, or a trust in which such a beneficiary ~~the natural person~~ has a beneficial interest, the present value on the day following the date of death of the life annuity to the beneficiary which would have been pay-

able if the participating employee had been eligible to receive a retirement annuity, computed under s. 40.23 or 40.26, beginning on the date of death and had elected to receive the annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount payable during the participant's lifetime. If there is more than one beneficiary the amount of the annuity and its present value will be determined as if the oldest of the beneficiaries were the sole beneficiary. If the death benefit payable to the beneficiary under this paragraph would be less than the amount determined under par. ~~(a)~~ or (b) the death benefit shall be payable under par. ~~(a)~~ or (b) and this paragraph shall not be applicable to the beneficiary. An annuitant receiving an annuity only under s. 40.24 (1) (f), which annuity was an immediate annuity, shall be deemed a participating employee for purposes of this paragraph only, but the amount payable under s. 40.24 (1) (f) shall not be changed.

SECTION 27. Nonstatutory provisions.

(1) TRANSFER OF FUNDS FROM THE TRANSACTION AMORTIZATION ACCOUNT OF THE FIXED RETIREMENT INVESTMENT TRUST.

(a) On December 31, 1999, after the annual distribution required under section 40.04 (3) (a) of the statutes for the 1999 calendar year is made, \$4,000,000,000 shall be distributed from the transaction amortization account of the fixed retirement investment trust to the reserves and accounts of the fixed retirement investment trust in an amount equal to a percentage of the total distribution determined by dividing each reserve's and account's balance on the prior January 1 by the total balance of the fixed retirement investment trust on the prior January 1.

(b) 1. The employee trust funds board shall determine each participating employer's share of the increase in the employer accumulation reserve that results from the distribution under paragraph (a) and shall establish for each employer a credit balance in the employer accumulation reserve that equals the employer's share of the increase in the employer accumulation reserve that results from the distribution under paragraph (a), based on each employer's share of covered payroll in 1998. The total amount that shall be reserved for credit balances under this subdivision shall be \$200,000,000. In lieu of requiring that an employer make required employer contributions under section 40.05 (2) (b) of the statutes, the employee trust funds board, beginning no later than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05 (2) (b) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). For any employer that is not required to make contributions under section 40.05 (2) (b) of the statutes, the employee trust funds board, beginning no later

than March 1, 2000, shall deduct from the employer's credit balance in the employer accumulation reserve, on a monthly basis, an amount that the employer would otherwise have been required to contribute under section 40.05 (2) (a) of the statutes had there been no establishment of the credit balance from the distribution under paragraph (a). The employee trust funds board shall make such deductions until the credit balance is exhausted, at which time the employer shall resume making all required employer contributions.

2. The total amount of the increase in the employer accumulation reserve that results from the distribution under paragraph (a) and that remains after the establishment of the credit balances under subdivision 1. shall, on the recommendation of the actuary, be applied to funding any liabilities created by the treatment of section 40.23 (2m) (e) 1., 2., 3. and 4. of the statutes in this act.

(c) The total amount distributed to the employee accumulation reserve under paragraph (a) shall be credited to participants' accounts based on their account balances as of January 1, 1999, pursuant to section 40.04 (4) (a) 2. and 2g. of the statutes.

(d) The total amount distributed to the annuity reserve under paragraph (a) shall be distributed as provided under section 40.27 (2) of the statutes.

(2) PURCHASE OF LEGISLATIVE SERVICE.

(a) In this subsection:

1. "Employer" has the meaning specified in section 40.02 (28) of the statutes.

2. "Final average earnings" has the meaning specified in section 40.02 (33) of the statutes.

3. "Legislative service agency" has the meaning specified in section 13.90 (1m) (a) of the statutes.

4. "Participating employee" has the meaning specified in section 40.02 (46) of the statutes.

(b) Any person who is a participating employee on the effective date of this paragraph shall be granted creditable service under the Wisconsin retirement system for any service that was performed before the effective date of this paragraph as a member or employee of the legislature or employee of a legislative service agency and that has not been previously credited, if the participating employee was a member or employee of the legislature or employee of a legislative service agency for at least 600 hours during the calendar year in which the service was performed or the calendar year immediately succeeding the calendar year in which the service was performed and if, not later than the first day of the 7th month beginning after the effective date of this paragraph, the participating employee submits an application for the creditable service to the department of employee trust funds and pays to the department a lump sum equal to the employee required contribution rate under section 40.05 (1) (a) of the statutes that is applicable to the service multiplied by the participating employee's final average earnings, determined as if the participating employee has terminated employ-

ment and applied for a retirement annuity under the Wisconsin retirement system on the date on which the department receives the participating employee's application for the creditable service, and by the number of months of creditable service granted under this paragraph.

(c) An employer may pay any amount payable under paragraph (b) on behalf of any participating employee.

(d) Any liability incurred as a result of granting creditable service to a participating employee under paragraph (b) that is not funded by the contributions made by the participating employee under paragraph (b), or by the employer on behalf of the participating employee under paragraph (c), shall be paid from the appropriation accounts under section 20.765 (1) (a) and (b) of the statutes. The amount apportioned to section 20.765 (1) (a) of the statutes and to section 20.765 (1) (b) of the statutes to fund the liability shall be determined by the presiding officers of each house of the legislature.

(3) **AUTHORITY OF EMPLOYEE TRUST FUNDS BOARD.** Notwithstanding any provision in this act, the employee trust funds board shall retain the authority to maintain proper actuarial funding of the Wisconsin retirement system.

(4t) **REQUEST THAT SUPREME COURT TAKE ORIGINAL JURISDICTION.** Considering the implementation of this act a matter of high public importance, the legislature requests that the supreme court take jurisdiction of any original action relating to the implementation of this act.

SECTION 28. Initial applicability.

(1) **CALCULATION OF CONTRIBUTION RATES.** The treatment of section 40.02 (7) of the statutes first applies to the calculation of contribution rates under section 40.05 (1)

and (2) of the statutes for the Wisconsin retirement system for the 2001 calendar year.

(2) **CALCULATION OF RETIREMENT BENEFITS.** The treatment of section 40.23 (2m) (b) and (e) 1., 2., 3. and 4. of the statutes first applies to the calculation of retirement benefits for individuals who are participating employees in the Wisconsin retirement system on January 1, 2000.

(3) **DEATH BENEFITS.** The treatment of section 40.73 (1) (a) (intro.), (am) and (c) of the statutes first applies to death benefits paid to participants in the Wisconsin retirement system who are participating employees in the Wisconsin retirement system on the effective date of this subsection.

(4) **VARIABLE ANNUITY.** The treatment of section 40.04 (7) (a) (intro.) of the statutes first applies to elections for variable annuity participation that are made by individuals who are participating employees in the Wisconsin retirement system on January 1, 2001.

(5) **CALCULATION OF UNFUNDED PRIOR SERVICE LIABILITY BALANCES.** The treatment of section 40.05 (2) (cm) of the statutes first applies to the calculation of unfunded prior service liability balances under section 40.05 (2) (b) of the statutes for the Wisconsin retirement system for the 2001 calendar year.

SECTION 29. Effective dates. This act takes effect on the day after publication, except as follows:

(1) **ELIMINATION OF TRANSACTION AMORTIZATION ACCOUNT AND CREATION OF MARKET RECOGNITION ACCOUNT.** The treatment of sections 25.17 (14) (f), 25.18 (1) (a) and (m) and 40.04 (3) (intro.), (a), (ab), (am) and (d) of the statutes takes effect on January 1, 2000.
